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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
The Use of N11 Codes and Other)
Abbreviated Dialing Arrangements)

CC Docket No. 92-105

REPLY COMMENTS OF THE
NEW YORK STATE DEPARTMENT
OF PUBLIC SERVICE

ORIGINAL
FILE

INTRODUCTION

The New York State Department of Public Service (NYDPS) submits these reply comments in the above referenced proceeding. The NYDPS opposes the Commission's proposal to assign N11 codes for local pay-per-call services. Such action ignores both the strong public interest and jurisdictional authority of the states in the assignment of N11 codes for local services. In addition, the comments fail to demonstrate how the public interest will benefit from the Commission's proposal. On the contrary, the comments highlight competitive concerns and the potential for significant extra costs resulting from the assignment of N11 codes for local pay-per-call services.

DISCUSSION

I. N11 Code Assignment For Local Services Is Beyond The Commission's Jurisdiction

In the Notice, the Commission asks what role state regulators should have in the allocation of N11 numbers in the event demand

exceeds the available supply of such numbers.¹ The comments on this question generally recognize both strong public interest and jurisdictional authority of the states in the assignment of N11 codes associated with the provision of local services.²

One exception is Rochester Telephone, which suggests that the Commission preempt state regulation of N11 codes.³ We believe that Rochester Telephone's suggestion is ill-advised. That suggestion ignores the strong interest the states have in this area, as noted by other parties, as well as the fact that N11 calls are necessarily intrastate calls because they must originate from the switch in the same numbering plan area (i.e., it is not possible to make a N11 call from one area code to another and it is thus not possible -- given the narrow exception for corridor service -- to make an interstate N11 call).⁴

The Commission has properly declined to preempt state regulation

1. Notice, para. 17.

2. See e.g., Comments of Ameritech Operating Companies, p. 11; BellSouth Corporation, pp. 11-12; Southwestern Bell, p. 8.

3. Comments of Rochester Telephone Corporation, p. 6.

4. See Comments of Bellcore, p. 1

of intrastate pay per call services;⁵ it should adhere to that policy and decline to preempt the states here as well.

II. N11 Code Assignment is Contrary To The Public Interest

Jurisdictional issues notwithstanding, we oppose the assignment of N11 codes for local pay-per-call services because it has not been shown how the public interest will benefit from this proposal. We agree with GTE that using N11 codes for local pay-per-call services does not appear to give the public access to some new service which could not be made available under seven-digit dialing arrangements (e.g., 976-xxxx).⁶ And as Bellcore notes, "On the user side, the benefits of abbreviated dialing access to commercial offerings are unclear."⁷ (emphasis added). Indeed, neither the Commission's proposal nor the comments provide any evidence to suggest that abbreviated dialing using N11 codes will enhance the quality of local pay-per-call services. Rather, it appears that the primary

5. CC Docket 91-65, In the Matter of Policies and Rules Concerning Interstate 900 Telecommunications Services, Report and Order (adopted September 26, 1991, released October 23, 1991) p. 36.

6. Comments of GTE, p. 3.

7. Comments of Bellcore, p. 3.; See also Comments of USTA, p. 12.

beneficiaries of the Commission's proposal would be the few enhanced service providers fortunate enough to be assigned a N11 code.

Assuming, arguendo, that consumers would perceive a benefit from abbreviated dialing arrangements to access local pay-per-call services, there are other methods currently available that achieve a similar result. In New York, local pay-per-call services are assigned a common central office prefix (e.g., 540, 970, 976). As consumers become familiar associating these prefixes with pay-per-call services (e.g., 976), they need remember only the last four digits of an enhanced service provider's telephone number. Southwestern Bell makes a similar argument, proposing the use of the "555" central office prefix for all service providers.⁸ We urge the Commission to examine whether dialing arrangements other than N11 can achieve essentially the same results as it seeks in this proceeding.

Although the comments fail to identify the public benefits associated with the assignment of N11 codes to enhanced service providers, they do highlight competitive concerns and the potential for significant costs resulting from the assignment of these codes.

8. Comments of Southwestern Bell, p. 12.

A. Competitive Concerns Associated With LEC Assignment of N11 Codes

As the Commission recognizes, demand for N11 codes is likely to exceed supply. Even the Information Industry Association, which claims to represent some 600 companies engaged in the information service industry, recommends that N11 codes not be assigned for abbreviated dialing because of their limited availability.⁹

This is not the case under the current format for assigning numbers to local pay-per-call services. As New York Telephone points out, the 540, 550 and 976 prefixes currently available to enhanced service providers allow for 30,000 seven-digit numbers within a LATA.¹⁰ By comparison, only eight N11 codes would be available for local pay-per-call services under the Commission's proposal. No evidence is provided in the comments to suggest that the availability of telephone numbers based upon the existing prefixes is near exhaustion.

The limited availability of N11 codes raises competitive concerns since someone will have to decide to whom the codes should be assigned. We disagree, therefore, with the Commission's suggestion

9. Comments of Information Industry Association, p. 1.

10. Comments of New York Telephone, p. 4.

that assignment restrictions need not be considered for local exchange carriers where demand for N11 codes exceeds the supply.

Establishment of assignment criteria will reduce any incentives a local exchange carrier might have to favor one enhanced service provider over other. The most obvious case is where the local exchange carrier or an entity affiliated with it is the information provider. Even if the local exchange carrier did not engage in anticompetitive activity with regard to N11 code assignment, the perception that it might favor one enhanced service provider over another is as Rochester Telephone notes, "an invitation to endless litigation over the reasonableness of an exchange carrier's allocation plan."¹¹

For similar reasons, we oppose the Commission's proposal that local exchange carriers be permitted to award preferences in assigning N11 codes to parties that propose "innovative" ways of using the public switched network. Instead, enhanced service providers should have an equal opportunity to use the functional elements of the local exchange carriers' networks in a manner that best meets their own needs, consistent with ONA principles. If those needs also complement the local exchange carriers' own objectives, so much the better. Local exchange carriers should not be allowed, however, to require

11. Comments of Rochester Telephone, p. 3.

conformity with their own strategic plans as a condition for the assignment of N11 codes or any other telephone number.

Finally, we believe that the states should be responsible for administering the assignment of N11 codes. In addition to our legal authority in this area, we believe that from a practical point of view, state administration of N11 code assignment will guarantee fair treatment among competing enhanced service providers, while ensuring that local public service requirements for N11 codes continue to be fulfilled.

B. N11 Code Assignment For Local Pay-Per-Call Services Will Result in Customer Confusion

As noted by a number of the commenting parties,¹² N11 codes currently are used for local services benefiting the public at large, including access to emergency services (i.e., 911), and network support services. With the exception of 411 (directory assistance), customers do not pay a charge when using these N11 codes.

Allowing N11 codes to be used for both public and commercial purposes is likely to result in customer confusion, as consumers are not able to easily distinguish, as they can today, between public and commercial calls. The result is likely to be an increase in the

12. See e.g., Comments of GTE, pp. 2-4; Ameritech, pp. 3-5; Bellcore, pp. 7-8.

number of customer complaints for charges associated with commercial pay-per-call services.

Problems also can be anticipated with respect to misdialed calls. For example, it is not difficult to imagine an emergency situation where a little child confuses "911" with some other N11 code that might be assigned to an enhanced service provider. Conversely, emergency service agencies could experience an increase in calls misdialed to 911 that were intended for an enhanced service provider, thereby potentially restricting legitimate emergency calls from being completed.

To reduce the potential for customer confusion, N11 codes should continue to remain available only for services that benefit the public at large. In this regard, we support GTE's recommendation to restrict the use of N11 codes to those services considered as basic or adjunct to basic under Computer II.¹³

C. The Commission Fails To Identify The Costs Associated with Abbreviated Dialing

By its own admission, the Commission lacks sufficient data as to the costs associated with LEC implementation of abbreviated dialing

13. Comments of GTE, p. 8.

through the use of N11 codes.¹⁴ Based upon the comments, the costs may not be insignificant as the Commission suggests in the Notice. For example, GTE states that in its 1,000 end offices still equipped with electromechanical switches, "substantial regrading" may be required in addition to new number selectors.¹⁵ GTE also notes that further switch modifications are required in all of its end offices in order to allow for recording and billing of N11 calls.¹⁶ USTA raises similar concerns.¹⁷

In addition to switch modifications to accommodate N11 codes used for commercial purposes, costs may arise in those jurisdictions where blocking of access to enhanced services is required. Under existing tariffs, New York Telephone and Rochester Telephone are required to provide residential customers with free blocking for local pay-per-call services upon request. Extending the blocking requirements to various N11 codes (211, 311, 511, 711, and possible 611, 811) may pose significant additional costs to local exchange carriers. These costs

14. See e.g., Notice at para. 9-10, 19.

15. Id., p. 4.

16. Id.

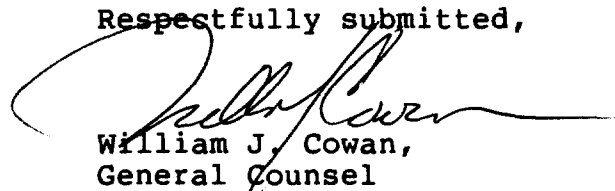
17. Comments of USTA, pp. 17-18.

can be avoided simply by maintaining current dialing arrangements for access to enhanced services.

CONCLUSION

The Commission should not adopt rules that require local exchange carriers to offer N11 abbreviated dialing arrangements for local pay-per-call services. That action is beyond the Commission's jurisdiction. And, even if the Commission had the authority to implement its proposal, the comments show that the proposed use of N11 codes would create a host of problems, confuse customers, and probably add significantly to the costs of telephone service. For all these reasons, the Commission should not adopt the proposed regulations.

Respectfully submitted,



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